

NOT TO BE PUBLISHED IN OFFICIAL REPORTS

California Rules of Court, rule 8.1115(a), prohibits courts and parties from citing or relying on opinions not certified for publication or ordered published, except as specified by rule 8.1115(b). This opinion has not been certified for publication or ordered published for purposes of rule 8.1115.

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION THREE

FRANCISCO MOLINA, JR.,

Plaintiff and Appellant,

v.

S.W.A.T. ENERGY, INC., et al.,

Defendants and Respondents.

A122508

(Contra Costa County
Super. Ct. No. C07 02846)

Plaintiff Francisco Molina, Jr., appearing in propria persona on appeal as he did in the trial court, appeals from a judgment dismissing his first amended complaint following the entry of an order sustaining without leave to amend a special demurrer by defendants S.W.A.T. Energy, Inc., Chevron Products Company and individuals Edward Wu, Steve Tang and Marian Tang. He contends that the court erred in sustaining the demurrer on the ground of uncertainty under Code of Civil Procedure section 430.10, subdivision (f).¹ We affirm.

Background

On December 27, 2007, plaintiff filed a complaint against defendants for damages arising out of his alleged wrongful termination. On April 30, 2008, the court sustained defendants' demurrer to the complaint with leave to amend. The order explains, "The complaint is 'ambiguous,' in that it is difficult to tell which of the lengthy introductory allegations apply to each of the named defendants, and to each cause of action. [Citation.] The complaint is also ambiguous as to whether plaintiff is attempting to state a fraud

¹ All statutory references are to the Code of Civil Procedure.

cause of action; the complaint includes references to section 1572 of the California Civil Code, but there is no separately captioned fraud cause of action. Finally, the length of the recitation of background facts in the introductory allegations, the confusing wording of those allegations, the references to legal authorities such as Nolo Press publications and attorney general opinions, and the overall method of the complaint's organization, render the complaint 'unintelligible' within the meaning of the special demurrer statute." The order advised plaintiff that he "may wish to consider obtaining legal assistance in drafting any amended complaint" and instructs that "[a]ny amended complaint shall comply fully with each of the following requirements: [¶] a. Plaintiff shall state each cause of action against one named defendant separately from the causes of action stated against the other named defendants; plaintiff shall not join multiple named defendants in one cause of action. . . . [¶] b. Plaintiff shall not combine multiple legal theories in a single cause of action. Thus, for example, a cause of action for fraud should not be combined with a cause of action for conversion. [¶] c. The caption for each cause of action shall comply with rule 2.112 of the California Rules of Court. [¶] d. The introductory allegations preceding the First Cause of Action, currently paragraphs 1 through 71, shall be limited to allegations identifying plaintiff and the defendants, and showing that Contra Costa County is the proper venue for this action. Each cause of action after the introductory allegations should contain only the necessary substantive allegations specifically relevant to that cause of action. [¶] e. All allegations of the complaint shall be stated 'in ordinary and concise language.' [Citation.] Plaintiff should allege only the ultimate facts essential to each cause of action, and not lengthy recitation of background evidentiary facts. [¶] f. All allegations should be set forth in clearly numbered paragraphs. [¶] g. The demand for relief in each cause of action shall comply with section 425.10 of the Code of Civil Procedure. [¶] h. Plaintiff shall not cite or quote legal authorities within the text of the complaint, excepts as follows: plaintiff may cite (without quoting) the statute relevant to a given cause of action or claim for relief."

On May 13, 2008, plaintiff filed his first amended complaint, which alleges causes of action for wrongful termination in violation of public policy, fraud and conversion. On

June 12, 2008, defendants filed a demurrer and motion to strike the first amended complaint. Defendants argued again that the amended complaint was uncertain within the meaning of section 430.10, subdivision (f) and that the amended complaint failed to comply with the requirements previously set forth by the trial court. Plaintiff did not file an opposition to the demurrer nor did he contest the court's tentative ruling sustaining the demurrer. On July 29, 2008, the court adopted its tentative ruling and sustained without leave to amend defendants' demurrer under section 430.10, subdivision (f). The court explained, "Despite the opportunity to amend, and despite the detailed explanation in the court's previous ruling of the pleading defects that plaintiff needed to address, plaintiff's first amended complaint is impermissibly 'uncertain' in most of the same respects as the original complaint."² Judgment was entered in favor of defendants on September 24, 2008. This appeal followed.

Discussion

Section 430.10, subdivision (f) authorizes a party against whom a complaint has been filed to object by special demurrer to the pleading on the ground that "[t]he pleading is uncertain. As used in this subdivision, 'uncertain' includes ambiguous and unintelligible." A demurrer for uncertainty may be sustained when the complaint is drafted in a manner that is so vague or uncertain that the defendant cannot reasonably respond, e.g., the defendant cannot determine what issues must be admitted or denied, or what causes of action are directed against the defendant. (*Khoury v. Maly's of California, Inc.* (1993) 14 Cal.App.4th 612, 616; Weil & Brown, Cal. Practice Guide: Civil Procedure Before Trial (The Rutter Group 2008) ¶ 7:85.)

² The court also sustained the demurrer under section 430.10, subdivision (e), stating, "Despite the confusing nature of the first amended complaint, the court has made a reasonable effort to evaluate those allegations specifically referenced under the headings for individual causes of action." Based on this evaluation, the court found that the amended complaint did not state facts sufficient to state a cause of action for wrongful termination in violation of public policy, fraud or conversion. Because we conclude that the demurrer was properly sustained without leave to amend on the ground of uncertainty, we do not consider this alternative ground.

On appeal from a judgment dismissing a complaint after a demurrer is sustained without leave to amend, we review de novo the trial court's decision to sustain the demurrer, and we review under the abuse of discretion standard the decision to deny the plaintiff leave to amend. (*Lazar v. Hertz Corp.* (1999) 69 Cal.App.4th 1494, 1501.) In determining whether the court properly sustained the demurrer without leave to amend, this court decides whether there is a reasonable possibility an amendment could cure the pleading defect. (*Schifando v. City of Los Angeles* (2003) 31 Cal.4th 1074, 1081.) The plaintiff bears the burden of proving there is a reasonable possibility an amendment would cure the defect. (*Ibid.*)

We agree with the trial court's determination that the first amended complaint is uncertain within the meaning of section 430.10, subdivision (f). As the court observed, the lengthy recitation of background evidentiary facts is rambling, confusing, drafted in incomplete sentences and thoughts and generally disorganized. Contained within the litany of unrelated facts are random and unexplained citations and quotations from various legal authorities. More importantly, it is difficult to determine with reasonable reliability what allegations are made against each defendant and what facts form the alleged basis of what cause of action. As defendants note, "Since [plaintiff] verified the [first amended complaint], [defendants] would be required to admit or deny each and every allegation and verify their response which is impossible if [they] cannot understand the allegations." While plaintiff is correct that a demurrer based on uncertainty should be strictly construed (*Khoury v. Maly's of California, Inc., supra*, 14 Cal.App.4th at p. 616), the uncertainty in this case is not, as plaintiff suggests, directed at inconsequential matters and the ambiguity does not involve facts "*presumptively within the [defendants'] knowledge.*" Rather, the level of uncertainty is sufficient to reasonably prevent defendants from filing a responsive pleading.

Plaintiff's briefs on appeal are similarly unintelligible and fail to comply with rule 8.204 of the California Rules of Court. Plaintiff fails to "[s]tate each point under a separate heading or subheading summarizing the point, and support each point by argument and, if possible, by citation of authority." (Cal. Rules of Court, rule 8.204(a).)

For example, plaintiff's opening brief states without elaboration: "Plaintiff asserts that he was denied a 'DAY IN COURT on the MERITS' for which [he] duly requests a REVERSAL and a REMAND 'FAIR TRIAL' as to the July 10, 2008 discovered FRAUD UPON THE COURT and subsequently documented in several motions between July 10, 2008 and July 29, 2008" The next sentence reads, "The order of dismissal of August 14, 2008, page 2 line 23, 24 'All future hearing dates in this action are hereby vacated.' is very disturbing because admissions deemed entered on Chevron U.S.A. Inc., SWAT Energy Inc and Steve Tang issues in light of the FRAUD UPON THE COURT have been forestalled, first by the court dates set by the court clerks, clerks, and now the trial judge." Plaintiff provides no additional explanation demonstrating what relevance any of these orders have to the ruling on the demurrer.

Plaintiff asserts in his "summary conclusion," also without explanation, that "[t]he trial court abused its discretion in sustaining a demurrer without leave to amend even though no request to amend such a pleading was made." We disagree. When the trial court sustained the demurrer to plaintiff's original complaint, it provided him with clear instructions for the amended complaint. Despite the court's assistance, plaintiff's amended complaint remains equally unintelligible. Plaintiff did not oppose the demurrer in the trial court. He did not appear at the hearing to request leave to amend or to offer an explanation for his failure to comply with the court's prior ruling. Moreover, plaintiff has not suggested how his complaint might be amended to cure the defects identified by the court. The trial court could reasonably conclude that even if it gave plaintiff an additional opportunity to amend there is no reasonable possibility that he would file an intelligible complaint. (See *Taliaferro v. Prettnner* (1955) 135 Cal.App.2d 157, 160 ["The courts are, and should be, liberal in allowing pleadings to be amended, but when, as here, the court reasonably concludes that the plaintiff has made no real effort to comply with the permission once given him to amend his complaint, the amended complaint becomes nothing but a sham. The court is not required to give him another opportunity"]; *Brenner v. City of El Cajon* (2003) 113 Cal.App.4th 434, 444 [failure to provide a proposed amendment or advanced on appeal any allegation that might cure the defects in amended

complaint supports the trial court's order denying leave to amend].) Accordingly, the trial court did not abuse its discretion in sustaining the demurrer without leave to amend.

Disposition

The judgment is affirmed. Defendants shall recover their costs on appeal.

Pollak, J.

We concur:

McGuinness, P. J.

Siggins, J.